

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

HAROLD GRAY, JR.,

Defendant and Appellant.

2d Crim. No. B237692
(Super. Ct. No. BA380364)
(Los Angeles County)

Harold Gray, Jr., appeals the judgment entered after a jury convicted him of resisting an executive officer (Pen. Code, § 69). The trial court sentenced him to three years summary probation with various terms and conditions.

Los Angeles Police Department (LAPD) Officers Jerrold Wert and John Downey stopped appellant for driving erratically. When Officer Wert contacted appellant as he sat in the driver's seat of his vehicle, appellant started yelling, "Why the fuck have you pulled me over?" Due to appellant's behavior and erratic driving, Officer Wert asked him to exit his vehicle. Appellant yelled, "I don't have to get out of the fucking vehicle. Why are you fucking pulling me over?"

After asking appellant to exit the vehicle three or four more times, Officer Wert opened the driver's door and appellant got out. As appellant was directed toward the sidewalk, he appeared agitated as he moved slowly with his driver's license and registration clenched in his hand. Officer Wert decided to handcuff appellant for the

officers' safety. When the officers grabbed appellant's arms to handcuff him, appellant pulled free, spun around toward Officer Wert, and said, "You can't fucking touch me." Officer Downey pushed appellant toward the sidewalk. Appellant threw his elbow at Officer Wert, and Officer Downey punched appellant in the face to distract him. Appellant then got Officer Downey in a headlock.

Both officers continued struggling with appellant until backup arrived. When the first backup officer arrived, appellant was taken to the ground while he still had a grip on Officer Downey's neck. In an attempt to make appellant release his grip, Officer Wert struck him in the head two or three times with a closed fist. After Officer Downey managed to break free from appellant, the officer punched or kneed appellant several times. Appellant screamed and continued resisting as the officers tried to get his arms out from beneath him. Another backup officer arrived and used a taser on appellant two or three times. At that point, appellant stopped resisting and the officers were able to handcuff him. A videotape of the entire incident, which was recorded on a nearby surveillance camera, was admitted into evidence and played for the jury.

Jamie Biel testified in appellant's defense. Biel, who did not know appellant, had been pulled over by Officer Downey a few years earlier. The officer immediately ordered him out of his car without telling him why he had been stopped or asking him for his license and registration. When Officer Downey asked Biel to put his hands behind his back, Biel asked him why he had been pulled over. Without any explanation, the officer grabbed Biel's arms and moved him toward the squad car. The officer then pushed Biel's chest down on the hood of the car and handcuffed him. Biel was subsequently placed in the back of the patrol car for 20 to 30 minutes while the officers searched his vehicle. He was given a ticket for failing to signal and following too closely, but the ticket was later dismissed. Biel filed a complaint with internal affairs, but the complaint was dismissed on the finding it was unjustified. On rebuttal, a California Highway Patrol officer who was present during the encounter in question testified that he and his partner chased Biel with lights flashing and sirens activated as

Biel drove up to 85 miles per hour. After Biel stopped, he stumbled out of his car and was combative when the officers tried to restrain him.

Timothy Williams, a retired LAPD detective, testified on appellant's behalf as an expert on excessive force. Based on his review of the videotape, Williams opined that Officer Downey used excessive force against appellant. On rebuttal, LAPD Sergeant James Katapodis testified to his opinion that Officer Downey's actions were reasonable under the circumstances and did not amount to excessive force.

Appellant testified on his own behalf. He was on his way to work on the night in question when the police stopped him. Although Officer Wert told appellant he had been stopped for driving erratically, appellant had done nothing to justify a traffic stop. He denied ever cursing or saying "[y]ou can't fucking touch me," and claimed that Officer Downey had no reason to use force against him. When appellant asked Officer Downey why he was grabbing him, the officer punched appellant in the jaw. Appellant did grab Officer Downey by the neck, but only because the officers were assaulting him and he was in fear for his life. When appellant let go of Officer Downey, the officer pulled appellant's head up and kneed him in the face. The taser was used on appellant after he said he was trying to comply with the officers' orders to put his hands behind his back.

Appellant also described a prior encounter with Officer Downey during a traffic stop in 2010. Appellant, who considered himself a good judge of demeanor as a result of his job as a security guard, did not initially comply with Officer Downey's order to get out of his car because the officer's demeanor and behavior caused appellant to fear for his safety.

We appointed counsel to represent appellant in this appeal. After examining the record, counsel filed an opening brief raising no issues and requesting that we independently examine the record pursuant to *People v. Wende* (1979) 25 Cal.3d 436.

Counsel also asks us to independently review the in camera proceedings on appellant's *Pitchess*¹ motion.

On June 6, 2012, we advised appellant in writing that he had 30 days within which to personally submit any contentions or issues he wished to raise on appeal. Appellant did not respond.

Having examined the entire record, which includes the transcript of the in camera proceedings on appellant's *Pitchess* motion, we are satisfied that appointed counsel has fully complied with her responsibilities and that no arguable issues exist. (*People v. Kelly* (2006) 40 Cal.4th 106, 123-124; *People v. Wende, supra*, 25 Cal.3d at p. 441.)

The judgment is affirmed.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

GILBERT, P.J.

YEGAN, J.

¹ (*Pitchess v. Superior Court* (1974) 11 Cal.3d 531.)

Robert J. Schuit, Judge
Superior Court County of Los Angeles

Katharine Eileen Greenebaum, under appointment by the Court of Appeal,
for Appellant.

No appearance for Respondent.